IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6663 of 1985

With

SPECIAL CIVIL APPLICATION No. 6098 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G K MADIA

Versus

G I D C

Appearance:

MR SV RAJU for Petitioners No. 1-2
MR ARUN H MEHTA for Respondent No. 1
M/S TRIVEDI & GUPTA for Respondent No. 1
RULE SERVED for Respondents No. 2,4
UNSERVED-EXPIRED (R) for Respondent No. 3
MR PARESH UPADHYAY for Respondent No. 5
RULE SERVED BY DS for Respondent No. 5

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 07/12/2001

COMMON ORAL JUDGEMENT

As both these petitions are connected with each other and have been ordered to be tagged for final hearing, are being disposed of by this common judgment. The first petition being Special Civil Application no. 6663 of 1985 has been filed by the petitioners belonging to scheduled castes and scheduled tribes and for quashing and setting aside the appointment of respondent nos. 2 and 3 as Senior Officers in the respondent no. 1 Corporation and for a direction to the respondent no.1 Corporation to appoint the petitioners in their place with retrospective date of appointment with all benefits including pay etc. as if the petitioners have been appointed instead of respondent nos. 2 and 3. Alternatively, to quash and set aside the oral test/interviews held on 2.10.1985 for the recruitment to the post of Senior Officer, now re-designated as Assistant Manager and to direct GIDC to hold fresh oral test.

2. Brief facts of the petition in petition being Special Civil Application no. 6663 of 1985 are that the petitioner no.1 is a member of Scheduled Tribe and is entitled to be given preference as a member of the Scheduled Tribe. The petitioner no. 2 is also a member of Scheduled Caste and he is also entitled for similar preference. Both the petitioners are qualified to be appointed as Senior Officers. Both the petitioners fulfil the requirements regarding qualification, written test for the Senior Officers in the case of direct recruitment. The respondent Corporation vide its advertisement in the local newspaper Gujarat Samachar dated 6.4.1983 invited applications for the recruitment for the post of Senior Officers. The petitioners were called for preliminary written test which was held by the respondent Corporation on 17.6.1984 and both the petitioners appeared in the written test. 12 persons including the petitioner no.1 was initially selected for oral interviews which were to be held on 8th November, 1984. The petitioners gathered information that the petitioner no.1 had obtained 55 marks in the written test out of 100 marks, whereas the petitioner no.2 obtained 51 marks in the written test. The petitioner no.1 was informed for the interview which was scheduled to be held on 8.11.1984. By a letter dated 1.5.1985 the petitioner was informed that oral interviews were postponed an the next date was to be fixed. Lateron, the petitioners came to know that the said interviews which were scheduled to

be held on 7/8.11.1984 were postponed at the instance of the Union. The petitioner no. 1 was informed by a letter dated 17.9.1985 that oral interviews were scheduled to be held on 28th September, 1985. The petitioner no.2 was also informed by a similar letter dated 17.9.1985. The responent no. 2 was also called for oral interview on 28th September, 1985. The petitioners also got the information that initially on 8.11.1984, only 12 persons were called for interviews. Thereafter, the number of candidates for interviews were malafide increased to 23. On 28th September, 1985, number of candidates called for interview were raised from 23 to 24. Ultimately, oral interviews were held on 2.10.1985 after about one year and the number of candidates called for interview was increased from 23 to 24. The petitioners were tested in the inteview for about 5 to 10 minutes. Several general questions were asked and the petitioners replied satisfactorily all questions. The petitioners' inteviews were conducted by four persons, namely Shri I.M.Balchandani, Corporate Personnel Manager; Shri M.M.Shah, Chief Accounts Officer; Shri H.B.Shah, Chief Engineer and Shri Hasmukh Vora, Board Member. Shri Basu had also joined the interview committee. Some candidates were also interviewed by the Board and some were interviewed by the members. When the petitioners were waiting outside for the interview, some senior office bearer of the employees Union had come there few minutes before the interviews had begun and he had whispered some words to one of the members of the committee, but the petitioners do not know the exact name of that person. The petitioners apprehend that thepetitioners might be taken to task. The members of the interview committee were enjoying high position, while the petitioners were serving as Assistants. The petitioners also got information that the respondent no.2 obtained only 37 marks in the written test an the respondent no. 3 obtained 41 marks. The mode and manner in which interviews were conducted were arbitrarily increased and the manner in which the members of the Union had access to the members of the interview commitee and the manner in which the oral interview was conducted clearly suggested that the oral interviews were only a farce. The respondent Corporation has already pre-determined to select respondent nos. 2 and 3. Hence, the petitioners wrote a letter dated 3.10.1985 to the respondetn no.1. It is also stated that the respondent Corporation has arbitrarily and capriciously appointed respondent nos. 2 and 3 to the post of Senior Officers pursuant to the advertisement stated above. With ultirior motive, the list of marks obtained by the candidates has not been published. Finally, marks given

to the canidates have also not been supplied to the petitioners. Inspite of requests made, the number of total marks obtained in the written test have not been given to the petitioners. In that respect, the petitioner no. 2 sent a letter dated 28th November, 1985 to the respondent Corporation for the marks obtained by the petitioner no. 2 in the written and oral test. But no reply has been received. Lateron, the Corporation has replied that they cannot be supplied the number or marks obtained by the petitioner no. 2. The respondent nos. 2 and 3 are also members of Scheduled Caste and Scheduled Tribes. Both the respondents were agitating for promotion and deemed seniority. For that purpose, the respondent no. 2 filed a petition in this Court being Special Civil Application no. 1146 of 1981 against the respondent Corporation claiming deemed date of seniority as Junior Officer. The respondent no. 2 has got considerable influence in the Employees Union of the respondent Corporation and the petitioners apprehended that at the instance of the Union, the respondent nos. 2 and 3 have been illegally and arbitrarily appointed as Senior Officers ignoring the legitimate claim of the petitioners in the process. The selection of the respondent nos. 2 and 3 is vitiated on the ground of malafide, arbitrariness and in contrvention of the provisions of Articles 14 and 16 of the Constitution of India. The petitioners who are having merits, than the respondent nos. 2 and 3 have been side-tracked only with a view to please the Union. High number of marks have been given in the oral interviews as a result of which the entire selection procedure is vitiated. The allocation of 12.2 percent of marks in the oral interviews vitiate the selection. The number of posts to be filled were three and the number of candiates were called for 24 which is almost 8 times to the number of posts to be filled. As per the decision of the Hon'ble Supreme Court, the number of candidates should not exceed 2 to 3 times of the number of vacancies. As such, arbitrary increase in the number from 12 to 24 with ulterior motive vitiates the process.

3. Affidavit-in-reply has also been filed by the respondent no.1 wherein it is stated that one of the questions which was pending for discussion and decision with the Union was about the promotion policy to be adopted by the respondent Corporation. This policy came to be decided only in the year 1985, as a result of which the recruitment was to be 60% by promotion and 40% by direct recruitment in future. It is admitted that originally 12 persons were called for interview. Those 12 persons consisted of 10 candidates from the general

category and two canidates from scheduled tribe were at the top of respective list of candidates. However, four vacancies were required to be filled in if suitable candidates were available i.e. two from scheduled tribe candidates, one from scheduled caste candidates and one from socially and economically backward class. However, if no suitable candidates could be available from these categories. Therefore, 10 candidates from the general candidates were called. It was considered by the Corporation that if two two scheduled tribes candidates are to be appointed, then, at least high number of candidates should be called for interview so that there can be selection on the basis of the merits. Similarly for filling up the post of one scheduled caste candidate and one SEBC candidates, more candidate who belong to those classes should also be called so that suitable candidates from those categories could be available and can be selected. As a result, total number of candidates who were called for interviews consisted of 10 general category candidates, six SC candidates and five ST candidates and three SEBC candidates. The number of 10 candidates from general category was only as a measure of stand-by so that in the event it became necessary on account of non-availability of suitable candidates of the reserved category, the candidates from the general category can be appointed. Thus, the number of candidates called for interview was 24 for filling up the four posts above-mentioned. It was made clear that all the four posts which were required to be filled up if suitable candidates were found by appointing two candidates from the S.T. and one each from the S.C. and SEBC. The candidates were interviewed for 15 to 20 minutes which were sufficient to judge the relative merit and demerit of the candidates. interviewed. The fact is denied that the candidates were interviewed by four named persons and some of the candidates were interviewed by five persons including the four named members and Shri Basu, Chief Executive Officer. In fact, all the candidates were interviewed by all the five members. The selection committee consisted of very high ranking officers who have judged the relative merits and demerits of the appointees objectively and without any other considerations. The fact is also denied that high ranking officers could be influenced by the representatives of the Union and the allegations made against the members of the committee are baseless, scandalous and concocted for the purpose of filing this petition. The first 10 candidates who obtained highest marks from the general category were called for interviews. So far as SC, ST and SEBC candidates were concerned, all the candidates who passed with 35 or more

percentage of marks were called for interviews. One Mr. M.D.Asari filed a petition being Special Civil Application No. 3570 of 1985 and this Court passed an order that the petitioner was a junior officer in GIDC (Enquiring branch). One of the prayers in that petition was that he had already applied for direct recruitment to the post of Senior Officer and he may be considered for direct recruitment also alongwith the claim for promotion an in promotion quota. The petitioner's claim is that he has a right to the post on the basis of reservation which is applicable to the respondent Corporation and on the basis of the roster point by promotion also. The Corporation was directed on the assurance given by Mr. Dave, the petitioner as direct recruitment in accordance with the rules in existence even on reservation quota, if applicable and that petition was permitted to be withdrawn. The respondents have been appointed on the basis of their merits and not on account of pendency of alleged departmental inquiry against other candidates. But it was also denied tht the respondents were appointed only to please the Union or their appointment was arbitrary or violative of Articles 14 and 16 of the Constitution of India. The post of Senior Officer is not only an administrative post, but he has to deal with the members of the public, sell plots and sheds in the industrial estates of the Corporation and has to perform the functions of a public relations officer and a salesman. The suitability of candidates has to be judged with reference to the post to which he is appointed. Other allegations regarding arbitrariness and ulterior motive have been denied.

4. In the petition being Special Civil Application No. 6098 of 1989, the petitioner applied for direct recruitment for the post of Senior Officer pursuant to the advertisement issued by the GIDC on 6.4.1983. Written test and interviews were held and the petitioner appeared, but the result was cancelled. On 17.6.1984, the petitioner was called for written test and he was, according to the petitioner, successful. All the 12 persons were called for interview on 8.11.1984, but eventhough the petitioner was successful in the written test, he was not called for the interview. According to the petitioner, he obtained 62 marks in the written test and he was at serial no. 12 in the merit list. Thereafter, the number of persons for interview was increased from 12 to 23 and the petitioner's claim was included on 28th September, 1985 for the interview. On 25th September, 1985, the interviews were postponed to 2.10.1985 in place of 25th September, 1985. The number of candidates was increased from 22 to 24 and the

interviews were held on 2.10.1985. The respondent no. 2 was appointed for the post by promotion as per the policy ratio of direct recruitment and promotion has to be 1:1. The respondent no.2 was appointed in violation of the policy. The petitioner wrote a letter to the respondent Corporation on 5.9.1986, but the petitioner did not receive any response. The petitioner again sent a letter dated 19th October, 1988. Then the petitioner received a reply dated 24.11.1988 whereby the petitioner was informed that the petitioner's representastion cannot be considered on administrative grounds. The advertisement was issued in Gujarat Samachar on 24th June, 1989 for the post of Senior Officer inviting applications for one vacancy for ST and one vacancy for SEBC. On 1.7.1989, a corrigendum was issued whereby it was made clear that the reserved quota for one post of SC shown in the advertisement on 24th June, 1989 should be read as one post of ST. The second corrigendum was issued on 27th August, 1989 whereby the advertisement dated 24th June, 1989 regarding the vacancy for SEBC candidates roster category was closed as two cadres for direct recruitment were already available. Though this petition was filed on 7.8.1989, on 21.11.1992, the respondent Corporation by a public advertisement, invited applications for the post of manager. The petitioner also applied for the said post on 2.12.1992. 24.12.1992 was the date for interview. The petitioner sent a letter to the Chairman of the respondent Corporation on 9.2.1993 and filed C.A. No. 393 of 1993 on 22.2.1993. Though that application was disposed of with the observation that the application be heard alongwith the main matter.

5. Affidavit-in-reply has been filed in this petition on behalf of the respondent Corporation wherein it is stated that applications were invited from scheduled castes and SEBC candidates and corrigendum was issued on 1st July, 1989 in Gujarat Samachar stating that where the word "SC" appears in the advertisement, the word "ST" should be read. However, a further advertisement was issued on 27th August, 1989 in Gujarat Samachar stating that no roster point was available for either SC or SEBC categories. The applications received from SEBC candidates for the post Administrative Manager and Junior Officer have been treated as closed. It is also stated in the affidavit that the petitioner who is holding the post of Assistant only had applied for the post of Senior Officer, that is, Assistant Manager in the year 1985 alongwith all other candidates. The petitioner was also interviewed and was found unfit. Therefore, his application for appointment to the post of Senior Officer/Assistant Manager was rejected on merits. The

employee working as Assistant is not eligible to be promoted to the post of Assistant Manager/Senior Officer directly under GIDC Staff Regulation, 1963. Only a class III Officer in the service of GIDC as a Junior Officer can be promote as Assistant Manager/Senior Officer on the criteria of proved efficiency and merits. Pursuant to the advertisement, various applications which were received in the year 1983 for the appointment by direct recruitment to the post of Assistant Manager/Senior Officer. The applications of the candidates were scrutinised and eligible candidates including the petitioner were called for written test based on the performance of various candidates at the written test including that of the petitioner. The candidates including the petitioner were called for the inteview before the selection committee. Out of the candidates who were called for oral interviews, three canidates were selected by the selection committee on merits. The number of candidates from 12 to 24 was increased on the ground that the GIDC wanted to give an opportunity to as many candidates who were within the zone of consideration for General/SC/ST/SEBC categories and find out the best available candidates. But no malafide can be attributed from such attitude adopted by the selection committee and no inference of malafide or abuse of power can be drawn against the respondent Corporation. The petitioner was not found suitable and hence he was not selected by the committee. It is also admitted that at the relevant time, four posts of Assistant Manager/Senior Officer were vacant and three posts were filled in by appointing three selected candidates to the post of Assistant Manager/Senior Officer. However, no roster point of SEBC category was vacant for direct recruitment in the post of Assistant Manager/Senior Officer. The fact is denied that the appointment of one post of SEBC candidate was mandatory to fill up the vacant roster point of SEBC. It was not due as alleged. It is also denied that no Rule, reservation policy or roster system required that one post should be reserved for SC, two for ST and one for SEBC and two other from general streamn. The appointment was made on the basis of the combined resolution of the written test as well as the oral interview. Some other candidates in SC/ST category might have obtained lesser marks than the petitioner in the written test is not relevant factor. The selection committee consisted of five persons. However, it might be that one member may or may not be present at the relevant time, but that does not mean that the decision of the committee is vitiated on this ground. The committee was consisting of five persons and the committee has taken the decision unanimously not to appoint the petitioner because he was

not found fit to be appointed on the basis of merits and efficiency to the post of Assistant Manager/Senior Officer. It is also denied that the senior office bearer of GIDC employees' union had come there before a few minutes of interview and whispered something to one of the members of the interview committee. The pressure tactics alleged by the petitioner have been denied. As per the decision of the selection committee, three posts of Senior Officer/Assistant Manager were filled by direct recruitment. The respondent no. 2 was selected on the criteria of proved merits and efficiency. The respondent no.2 was appointed as Assistant Manager/Senior Officer on the recommendation of the selection committee in accordance with law and criteria of proved merits and efficiency. The roster point of SEBC is for class-II non-technical post as stated in the Government circular dated 31st March, 1982. It is not necessary that the same is for the post of Assistant Manager which is also a class II post. At the relevant time, SEBC roster point was available for another class II post of Accounts Officer/Audit officer which is also a class -II non-technical post. Therefore, the allegations of the petitioner are based on misconception of the letter dated 31st March, 1982. The ratio of direct recruitment and promotion could be maintained because no direct recruits were available for the post concerned. In the interest of administration of the respondent Corporation, the departmental candidates belonging to a lower category who have the test of proved merits and efficiency were promoted.

6. Heard the learned counsel for the petitioners and the petitioner of Special Civil Application No. 6098 of 1989 as party in person. I have considered the contentions raised by the learned counsel for the parties. So far as the petition being Special Civil Application No. 6098 of 1989 is concerned, the advertisement was given for the post of Senior Officer on 6.4.1983. Written test was held and thereafter, letters were issued for the interviews scheduled to be held on 28th April, 1983, but postponed to 6.5.1983. It is stated that the petitioner was also called for the interview on 8.11.1984. Written test and personal interviews were held but the result was cancelled. Lateron the petitioner was called for written test on 17.6.1984 and according to the petitioner, he was successful. 12 persons including the petitioner were called for interview on 8.11.1984. The petitioner was included in the list of candidates called for the interview. The number of candidates were increased from 12 to 23 and the interview was scheduled to be held on

28th September, 1985, but the date for the interview was postponed to 2.10.1985. On 2.10.1985, the number of candidates further increased from 23 to 24 for the inteviews. The respondent no. 2 was appointed for the postof promotion as per the policy and ratio of direct recruitment and promotion was 1 : 1 . The appoint of the respondent no.2 is said to be in violation of the policy. The petitioner sent several letters inquiring about the result. In the last, on 24th November, 1988 the respondent Corporation replied that the petitioner's representation cannot be considered on administrative grouns. On 24.6.1989 an advertisement for appointment on various posts was made and reservation for SEBC was also announced.

7. In the counter affidavit filed in the other petition, it is stated that four vacancies which were required to be filled in were to be filled in if suitable candidates were available as detailed, two from ST candidates, one from SC candidates and one from SEBC candidates. It is also mentioned in the counter-affidavit of this petition that originally on June 24, 1989, an advertisement was issued by the respondent Corporation inviting applications for the post of Assistant Manager class-II/Senior Officer from SC, one post and for one post from SEBC. However, in the corrigendum issued on July 1, 1989, the word "SC" appearing in the advertisement dated 24.6.1989 was directed to be read as "ST". Another corrigendum was issued on 27th August, 1989 in Gujarat Samachar stating that no roster point was available for either SC or SEBC categories and the applications received from SEBC candidates for the posts of Assistant Manager and Junior Officer have been treated as closed. It is also stated in the affidavit that the petitioner who is holding the post of Assistant only applied for the post of Senior Officer, i.e. Assistant Manager in the year 1985. Alongwith others, he also appeared in the interview and was found unfit. Therefore, the application of the petitioner for the appointment to the post of Senior Officer/Assistant Manager was rejected on merits. In this connection, the learned counsel for the petitioner as well as the petitioner himself contended that the petitioner obtained 62 marks in the written test and no record has been placed before this Court inspite of the fact that the record was summoned by this Court. On what basis, the petitioner being top-most candidate in the written test, was found unfit. It is stated in the affidavit by the respondents in other petition that the record is not available and it seems that during 1992 when head office of the respondent Corporation was

shifted from Ahmedabad to Gandhinagar, during transportation of the record, the same might have been misplaced or lost. Due to this reason, record could not be placed before this Court.

8. I have carefully considered this contention, but I do not find any substance in this contention in view of the fact that the petitioner applie for the post belonging to SEBC which has been de-reserved by the advertisement dated 27th August, 1989. Moreover, the petitioner appeared in the written test as well as in the interview. The selection committee did not find the petitioners fit for the post. This Court cannot examine as to on what basis, the number given in the interview and why the selection committee could not find the petitioner successful. As such, the petitioner having not been found successful in the result of the written test as well as interview, I do not find any merit in the petition. Accordingly, the petition being Special Civil Application no. 6098 of 2985 deserves to be dismissed.

9. So far as other petition being Special Civil Application no.6663 of 1985 is concerned, the learned counsel for the petitioners contended that an advertisement was issued on 6.4.1983 wherein the vacancy of Senior Officers were advertised inviting applications for the post of Senior Officer. It is also mentioned in the advertisement dated 6.4.1983 that the Corporation can consider relaxing the conditions of age, qualification and experience in the deserving cases in which preference will be given to the qualified candidates belonging to SC and ST at the discretion of the Corporation. It is stated in para-5 of the petition that the State Government had written to the Chief Executive of the respondent Corporation on 31st March, 1982 requesting the Chief Executive to regard the members of SC and ST in various posts including class II non-technical post as per the quota allotted for the same in compliance with the reservation policy and roster system. On the basis of the letter sent by the State Government to the respondent Corporation the posts of Senior Officer were notified inviting applications thereof. It is mentioned in the affidavit-in-reply that four posts were required to be filled in if suitable candidates were available from Scheduled tribe for two posts and one from Scheduled caste candidates and one from SEBC. Though it is also mentioned that if suitable candiates are available belonging to such categories, it appears that the petitioners alongwith others had applied and written test was held. Thereafter, interview was held and after the interview, respondent nos. 2 and 3 belonging to ST and

SC categories were found fit and they were appointed. The contention of the learned counsel for the petitioners is that out of four posts, the respondents filled up only three posts selecting and appointing respondent no. 2 as ST candidates and respondent no. 3 as SC candidates and one from general category. The fourth post which was not for general category, even then that has been allowed to general category. The Government as well as Semi-Government departments are required to strictly follow reservation policy and roster system. But in the present case, the department has not followed reservation policy and roster system strictly as per the direction of the Supreme Court in the case of State of U.P. and others vs. R.K.Tandon and others reported in 1996(10) SCC, 247 wherein it has been held that while preparing their interse seniority an fitment, the Government was not strictly following the rule of roster and reservation for Scheuled Caste, Scheuled Tribes and Backward Class candidates and their placement on the respective vacancies earmarked for them in the roster. It would be obvious that when the Government makes appointments, through administrative instructions or statutory rules, the appointment of candidates should be made according to order of merit and roster. The Government should follow the rule of reservation and make appointment as per roster point. It is also pointed out by the learned counsel for the petitioner that regulation 7(A) of GIDC Regulations 1963 provides that in the matter of filling up different posts of establishment of the Corporations, instructions issued by the State Government from time to time about reservation of post for the candidates belonging to scheduled castes, scheduled tribes and other backward communities and all matters relating thereto shall be generally followed by the Corporation. It is also pointed out by the learned counsel for the petitioners that initially 12 persons including two candidates belonging to scheduled tribes were called for interview. At the pressure of employees' union, the date of interview was postponed as respondent nos.2 and 3 were insisting for promotion. For that purpose, a writ petition was also filed in this Court, but lateron that petition was withrawn. It was assured by the union of the employees as well as the management that the respondent nos. 2 and 3 will be appointed as direct recruits. The number of candidates was increased from 10 to 23 for interview. Lateron, the number of candidates was increased from 23 to 24 for the candidates who were called for the interview. It is also stated that during the period of interview, one official of the employees' union met one of the members of the selection committee and whispere something. Thus, the contention of the

learned counsel for the petitioners is that number of persons was increased and that was increase with a motive to accommodate the respondent nos. 2 and 3 and they have been selected and appointed on the basis of the assurance given by the employees' union and the management. As such, the selection was motivated, erroneous and was not in accordance with law. Hence, the selection requires to be quashed and set aside by this Court. So far as the increase of number of candidates, it appears that initially when 12 persons were called for interview, at the instance of the union, the Corporation could be able to know that persons belonging to scheduled castes and other persons have not been called for interview. Hence, the criteria calling for candidates for the interview was decreased from one point to certain points and the persons who have obtained 35 marks in the written test were called. If certain other persons including candidates belonging to SC have been called after decreasing the criteria calling for the candidates, cannot be said to be motivated and this Court does not think it proper to hold that it vitiates the process of selection on this count.

10. It is also contended by the learned counsel for the petitioners that the petitioner nos. 1 and 2 obtained 55 and 51 marks respectively. In this connection, the contention of the learned counsel for the petitioners is that in the Supreme Court decision, it is held that there should not be weightage of more than 10 to 12% in the interview and six times of vacant posts were called for, this is also illegal. At the most, weightage 2 to 3 candidates should have been called for interview. The learned counsel for the petitioners also relied on the decision of the Apex Court in the case of Ashok alias Somanna Gowda and another vs. State of Karnataka reported in 1992(1) SCC, 28 wherein it has been held that the Rules providing for allotment of 50 marks for interview out of total 150 marks is in violation of the dictum laid down by the Supreme Court in Ashok Kumar Yadav and Mohinder Sain Gang cases. (1985(4) SCC, 477 and 1991(1) SCC, 662. However, it has also been considered that in view of the fact that the result of the impugned selection was declared in 1987 and the selected candidates have already joined the post and further selection has been made according to Rules of 1973, this practice is being consistently followed for the last 17 years. There is no allegation of any malafide in the matter of impugned selection. It would not be just and proper to quash the selection on the above grounds. In the present case, the respondent nos. 2 and 3 have already been appointed in the year 1985.

Even if some irregularity has been committed by the selection board, this court does not think it fit to examine the fact as to what numbers were obtained by the respondents and petitioners during the interview and what procedure has been followed for selection of respondent nos. 2 and 3 during the interview. So far as bias and motive is concerned, the only allegation is that one of the members of the union met and whispered something to one of the members of the selection committee just few minutes prior to start of the interview process and at the instance of the union, the number of candidates was decreased for the interview from 12 to 24, in this respect, it is made clear in the affidavit-in-reply that it was necessary on account of non-availability of suitable candidates of reserved category, the candidates from general category and other candidates belonging to reserved categorys were called for and the number of candidates called for the interview was 24 for filling up four posts above-mentioned. Even if the candidates six times of the actual vacancies were called for, the selection proceedings would not be vitiated on this count. Even if some irregularity has been committee in this respect and the candidates should not be called for twice or thrice. As per the rule laid down by the Supreme Court in the case of Ashok Kumar Yadav and others vs. State of Haryana and others reported in 1985(4) SCC, 417, on the ground of malafide or bias or oblique motive, the appointment already made in 1985 cannot be interfered with only on the basis of a bald statement that some person of union met one of the members of the selection committee and whispered something which is not substantiated on any material and evidence and that the number of persons was increased from 12 to 24 for interview at the instance of the union. It is also contended that there were four vacancies, out of which 1 for SC, two for ST and one for OBC, but the respondents have selected only one from ST and one from SC community an one from general category though it was earmarked for OBC. In this respect, it is also mentioned in the counter affidavit filed on behalf of the respondents that if sufficient number of suitable person from reserved category would be available, then they can be selected and appointed, but there is nothing on record to show that besides the respondents, any other person was found suitable by the selection committee. In case suitable persons belonging to reserved category is not found, then the persons from the general category can be appointed and the post for reserved category will be carried forward. It is nowhere denied in the counter affidavit filed on behalf of the respondents that the post for reserved category which could not be filled, has not been

carried forward. As such, I do not find any good reason for interference. This petition deserves to be dismissed.

11. Accordingly, in view of the above, both the petitions are dismissed. Rule is discharged in each petition with no order as to costs. However, the respondent Corporation is directed to sort out vacancies for reserved categories in accordance with reservation policy and roster system, notify the same and shall appoint suitable candidates from the reserved categories in accordance with law, as far as possible within a period of six months from the date of receipt of writ of this Court.

...